

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MICHAEL DAVID AMBROSE,

Plaintiff,

v.

CIVIL ACTION NO. 5:20-CV-116
Judge Bailey

**BARBOUR COUNTY POLICE PHIL
FERGUSON, Sherif, THOMAS HOXIE,**
Barbour County Prosecutor, **SUZANNA,**
Works for EMS in Barbour County,
DEPUTY GONZALES, Deputy in Police
Department, **TODD LAWRENCE,** Call
Taker,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 15]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on October 29, 2020, wherein he recommends the Complaint in this case be dismissed with prejudice as barred by the doctrine of federal abstention in state court matters, and that the plaintiff's Motion for Leave to Proceed *In Forma Pauperis* be denied and the filing fee waived. For the reasons that follow, this Court will adopt the R&R.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1971).

The Complaint in this case arises out of plaintiff’s arrest and subsequent state court proceedings. In his Complaint, plaintiff alleges several claims of misconduct, including that defendant Ferguson conspired with the victim and used his power as sheriff to gain a conviction, that the prosecutor omitted cases and withheld evidence to delay trial, and that “someone from the EMS” falsified documents. See [Doc. 1]. On October 29, 2020, Magistrate Judge Mazzone filed his R&R; therein, the magistrate judge found that the plaintiff’s claims are barred by the doctrine of federal abstention in state court matters, set forth in *Younger v. Harris*, 401 U.S. 27 (1971). [Doc. 15 at 3]. The magistrate judge found that the three conditions set forth in *Younger* are met here, and that this case should therefore be dismissed with prejudice. [Id. at 3–5].


On November 23, 2020, plaintiff filed his objections [Doc. 17]. These objections re-allege plaintiff's original claims and assert that defendants are violating his constitutional and civil rights. Nowhere in his objections, however, does plaintiff address the R&R's finding that these claims are barred by the doctrine of federal abstention in state court matters; nor does plaintiff provide any other basis for this Court to deviate from the magistrate judge's concise analysis. Accordingly, the Court finds that the R&R should be adopted and this case dismissed with prejudice.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation** [Doc. 15] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the plaintiff's objections [Doc. 17] are **OVERRULED**. Accordingly, the Complaint [Doc. 1] is hereby **DISMISSED WITH PREJUDICE** and the Motion to Proceed *In Forma Pauperis* [Doc. 2] is hereby **DENIED**, and the filing fee waived. The Court further **DIRECTS** the Clerk to enter judgment in favor of defendants and **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: January 26, 2021.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE